Notre Dame Law Review

Volume 57 | Issue 5 Article 2

1-1-1982

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As our society has become more complex, industrialized, and impersonal, it has become correspondingly more difficult for individuals to find employment where their religious needs are voluntarily accommodated. Many have faced the economic hardships of unemployment as a result of their religious convictions. Others have faced similar hardships when their religious beliefs conflicted with state regulations in areas such as taxation and education.

Accordingly, courts and legislatures increasingly have been called upon to accommodate religious beliefs and practices. In *United States v. Lee*,[3] which involved the question of whether the free exercise clause of the first amendment prohibits the forced payment of social security taxes by an Old Order Amish employer when the payments violated his religious beliefs, the Supreme Court of the United States recently stated: "Religious beliefs can be accommodated, . . . but there is a point at which accommodations would 'radically restrict the operating latitude of the legislature.' "[4] The Court recognized that " 'to make accommodation between the religious action and an exercise of state authority is a particularly delicate task . . . because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing . . . prosecution.' "[5] However, "[n]ot all burdens on religion are unconstitutional . . . . The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest."[6]

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3 102 S. Ct. 1051 (1982).

4 *Id.* at 1056 (quoting Braunfeld v. Brown, 366 U.S. 599, 606 (1961)).

5 *Id.* (quoting Braunfeld v. Brown, 366 U.S. 599, 605 (1961)).

6 *Id.* at 1055.

I. The Spectrum of Accommodation

The Supreme Court has addressed religious accommodation in a broad spectrum of situations. It has granted unemployment compensation to a Seventh-day Adventist[7] and a Jehovah's Witness[8] who had been denied compensation after refusing to take jobs conflicting with religious beliefs. It has exempted the Old Order Amish from certain compulsory education laws,[9] and dissenters from the draft.[10] However, the court has limited religious freedom when confronted by issues in which it considers the government to have an overriding interest, including polygamy,[11] child labor,[12] and tax collection.[13]

Congress has legislatively decreed a few, wide-ranging religious accommodations. These include exemptions from social security taxes,[14] from the draft,[15] from labor union dues and fees,[16] and from compulsive participation in abortions for objecting employees.[17] The greatest number of religious accommodations are made under Title VII of the Civil Rights Act of 1964, which makes it unlawful for an employer to discriminate against any individual because of that individual's religion.[18] In addition, Congress stated that it is an *unlawful employment practice* for a labor organization to discriminate against an individual because of his religion or to cause or attempt to cause an employer to discriminate against an individual in violation of the Civil Rights Act of 1964.[19]

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7 Sherbert v. Verner, 473 U.S. 398 (1963).

8 Thomas v. Review Bd. of Ind. Employment Sec., 450 U.S. 707 (1981).

9 Wisconsin v. Yoder, 406 U.S. 205 (1972).

10 Gillette v. United States, 401 U.S. 437 (1971).

11 Reynolds v. United States, 98 U.S. 145 (1879) (bigamy statute enforced against Mormon).

12 Prince v. Massachusetts, 321 U.S. 158 (1944) (child labor law enforced against minor distributing Jehovah's Witness literature).

13 United States v. Lee, 102 S. Ct. 1051 (1982).

14 26 U.S.C. § 1402(e), (g) (1976).

15 50 U.S.C. App. § 456(j) (1976).

16 29 U.S.C. § 169 (1976).

17 42 U.S.C. § 300a-7 (1976).

18 Act of July 2, 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified in scattered sections of 42 U.S.C.). The key provision in Title VII, 42 U.S.C. § 2000e-2(a), provides that

> It shall be an unlawful employment practice for an employer -
>
> (1) to fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . .

19 This section provides as follows:

> (c) It shall be an unlawful employment practice for a labor organization -
>
> (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
>
> (2) to limit, segregate, or classify its membership or applicants for membership,

In 1967, the federal Equal Employment Opportunity Commission adopted Guidelines on Discrimination Because of Religion. These guidelines decreed that the duty not to discriminate on religious grounds includes an additional obligation on the part of the employer to accommodate the religious practices of his employees or prospective employees so long as accommodation does not impose an undue hardship on the employer.[20]

In 1972, Congress amended Title VII to require specifically that reasonable accommodation must be made for an individual's religious observance, practice, and belief, if accommodation could be done reasonably and without undue hardship to the employer. The 1972 amendment provides:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.[21]

II. Constitutional Issues in Accommodation

Any religious accommodation, whether by court order or legislative enactment, must be measured against constitutional standards. The first amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."[22] The Supreme Court has recognized "the governmental obligation of neutrality in the face of religious differences."[23] Realization of this stated objective of neutrality often raises important constitutional concerns.

Although the free exercise clause prohibits the government from imposing restrictions on religious practice, a state may justify a bur-

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or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment because of such individual's race, color, religion, sex, or national origin;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

20 Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.1 (1980).

21 42 U.S.C. § 2000e(j) [§ 701(j)] (1976).

Although there was considerable disagreement in the Congress as to the enactment of the Civil Rights Act of 1964 and the subsequent amendments thereto, the adoption of the 1972 amendment was affected without dissent in the Senate.

22 U.S. CONST. amend. I.

23 Sherbert v. Verner, 374 U.S. 398, 409 (1963).

den on the free exercise of religion "by showing that it is essential to accomplish an overriding governmental interest."[24] The Supreme Court applied this standard in *United States v. Lee*,[25] where an Amish farmer who refused on religious grounds to pay employer's social security taxes contended that the failure to accommodate his beliefs is prohibited by the free exercise clause. Lee attempted to extend to Amish who employ other Amish the § 1402(g)[26] exemption from social security taxes granted by Congress to self-employed members of religious groups. The Supreme Court recognized the vital governmental interest in the social security system and stated that "[b]ecause the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."[27] The Court also based its refusal to exempt Lee from social security taxes upon the distinction between self-employed Amish and the employees of Amish employers, finding that while self-employed Amish are a narrow, readily identified category, employees of the Amish are members of the general class of "wage earners employed by others," against whom the social security system must uniformly apply.[28]

Although free exercise concerns are inherent in any question of religious accommodation, the controversy surrounding accommodation centers on whether religious accommodation violates the establishment clause. In *Lemon v. Kurtzman*,[29] the Supreme Court enunciated a three-part test for determining whether a statute is permissible under the establishment clause. The test provides that "[f]irst, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster 'an excessive government entanglement with religion.' "[30]

Two United States Courts of Appeal have recently applied the *Lemon v. Kurtzman* test to uphold the constitutionality of Title VII's accommodation requirement. The Seventh Circuit in *Nottelson v. Smith Steel Workers D.A.L.U.*[31] and the Ninth Circuit in *Tooley v. Mar-*

24 United States v. Lee, 102 S. Ct. 1051, 1055 (1982).

25 102 S. Ct. 1051 (1982).

26 26 U.S.C. § 1402(g) (1976).

27 102 S. Ct. at 1056.

28 *Id.* at 1057.

29 403 U.S. 602 (1971).

30 *Id.* at 612-13 (quoting Walz v. Tax Commission, 397 U.S. 664, 674 (1970)).

31 643 F.2d 445 (7th Cir. 1981) (Seventh-day Adventist alleging religious discrimination after being discharged for failing to contribute to the union).

tin-Marietta Corp.[32] ruled that such accommodation does not violate the establishment clause, and the Supreme Court denied petitions for writs of certiorari.[33] The Supreme Court also dismissed appeal from a California case, *Rankins v. Commission on Professional Competence*,[34] in which the California Supreme Court similarly upheld accommodation to employees' religious practices against establishment clause challenges.

III. Accommodation Under Title VII

A. *The Range of Title VII Claims*

Religious discrimination generally involves a one-on-one situation. For instance, one person in a plant may wish to be excused from work on Sunday or Saturday in order to observe his Sabbath.[35] The individual focus of religious discrimination distinguishes it from other legislatively protected areas of Title VII. Discrimination on the basis of race, color, sex, or national origin usually affects a substantially large and identifiable class, and class actions abound. In contrast, the religious accommodation standard written into law in 1972 requires the courts to weigh the impact of certain employment practices on a *specific* individual's religious practices and then fashion an individual remedy. Accordingly, the nature of religiously based Title VII claims and the remedies sought vary widely from case to case.

Most claims filed under the religious accommodation provisions of Title VII involve employees objecting to Sabbath employment[36] or membership in or financial support of labor organizations.[37]

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32 648 F.2d 1239 (9th Cir. 1981) (Seventh-day Adventist seeking to enjoin attempted discharge after failing to pay union dues).

33 Tooley v. Martin-Marietta Corp., 648 F.2d 1239 (9th Cir.), *cert. denied*, 102 S.Ct. 671 (1981); Nottelson v. Smith Steel Workers D.A.L.U., 643 F.2d 445 (7th Cir.), *cert. denied*, 102 S.Ct. 587 (1981).

34 24 Cal. 3d 167, 593 P.2d 852, 154 Cal. Rptr. 907, *appeal dismissed*, 444 U.S. 986 (1979).

35 Sabbatarians have long faced the "built-in headwinds" of an employment policy that requires employees, particularly new employees, to work on Friday night or Saturday. This practice operates to exclude Sabbatarians from employment. To a lesser degree, since many industries close down or only employ skeleton staffs on Sunday, those who refrain from any secular work on Sunday have similar problems.

36 Jordon v. North Carolina Nat'l Bank, 565 F.2d 72 (4th Cir. 1977); United States v. City of Albuquerque, 545 F.2d 110 (10th Cir. 1976); Draper v. United States Pipe & Foundry Co., 527 F.2d 515, 520 (6th Cir. 1975); Riley v. Bendix Corp., 464 F.2d 1113 (5th Cir. 1972); Kendall v. United Airlines, Inc., 494 F. Supp. 1380 (N.D. Ill. 1980); Padon v. White, 465 F. Supp. 602 (S.D. Texas 1979); Ward v. Allegheny Ludlum Steel Corp., 397 F. Supp. 375 (W.D. Pa. 1975), *vacated and remanded*, 560 F.2d 579 (3rd Cir. 1977).

37 Anderson v. General Dynamics Convair Aerospace Div., 648 F.2d 1247 (9th Cir.

However, Title VII has also been applied to other religious concerns.

A California case held that the U.S. Postal Service had discriminated against an individual who refused to distribute draft registration materials.[38] The Third Circuit ruled that an employer must accommodate a Jehovah's Witness whose religious beliefs proscribed the raising and lowering of the flag.[39] A District of Columbia court held that Title VII covered a Roman Catholic Internal Revenue Service tax law specialist who had been refused promotion because of his religious objection to processing applications for tax exempt status of abortion and homosexual organizations.[40] The Seventh Circuit held that Title VII was violated when an Orthodox Jew was not permitted to take a Civil Service examination on a day other than his Sabbath.[41] The Fifth Circuit held that the religious accommodation provision of Title VII protected an atheist whose employer required her to attend a prayer meeting during working hours.[42]

In addition, the Seventh Circuit has held that the prohibition in Title VII of discrimination based on "religion" is not limited to religious observances and practices specifically mandated or prohibited by a tenet of an employee's religion. It also protects conduct which is religiously motivated.[43]

B. *Finding Religious Discrimination*

Chief Justice Burger in *Griggs v. Duke Power Co.*[44] stated that the objective of Title VII was to achieve equality of employment opportunities. In arriving at the proper legal definition of the term "discrimination" in a Title VII racial discrimination case, the Court in *Griggs* rejected the concept of "ill will." It also held that the term meant more than "unequal treatment."

1981); Tooley v. Martin-Marietta Corp., 648 F.2d 1239 (9th Cir. 1981); Nottleson v. Smith Steel Workers, 643 F.2d 445 (7th Cir. 1981); Burns v. Southern Pac. Transp. Co., 589 P.2d 403, 405 (9th Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979); McDaniel v. Essex Int'l, Inc., 571 F.2d 338, 343 (6th Cir. 1978); Cooper v. General Dynamics Convair Aerospace Div., 533 F.2d 163 (5th Cir. 1976).

38 McGinnis v. United States Postal Serv., 24 FEP Cas. 999 (N.D. Cal. 1980).

39 Gavin v. Peoples Natural Gas Co., 613 F.2d 482 (3d Cir. 1980).

40 Haring v. Blumenthal, 471 F. Supp. 1172 (D.D.C. 1979).

41 Minkus v. Metropolitan Sanitary Dist., 600 F.2d 80 (7th Cir. 1979).

42 Young v. Southwestern Sav. & Loan Ass'n, 509 F.2d 140 (5th Cir. 1975).

43 Redmond v. GAF Corp., 574 F.2d 897, 903 (7th Cir. 1978). Of passing interest is a case holding that plantiff's "personal religious creed" that "Kozy Kitten People/Cat Food" contributed significantly to his well being, and therefore to his work performance, was merely a personal preference beyond the parameters of the concept of religion as protected by the Constitution and Title VII. Brown v. Pena, 441 F. Supp. 1382 (S.D. Fla. 1977).

44 401 U.S. 424 (1971).

Although ill will and unequal treatment are illegal discriminatory practices, the Court held that Title VII is also directed against the "consequences" or "effects" of an employment system. According to *Griggs*, if an employment practice operates to exclude a minority, it is illegally discriminatory. "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity."[45] The Court also held that good intent or absence of discriminatory intent does not redeem a system which operates as "built-in headwinds" for minority groups.[46]

The accommodation requirement of Title VII extends the consequences test of *Griggs* to prohibit present discriminatory consequences of present employment practices. This extension was necessary because religious discrimination in employment does not always stem from pervasive historical and social patterns of discrimination. If Title VII prohibited only the present effects of past religious discrimination, the Act would have little impact, and no remedy would exist for discriminatory practices by new employers or by employers having no history of past discrimination.

In *Robinson v. Lorillard*,[47] the United States Court of Appeals for the Fourth Circuit stated:

> The test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business . . . and there must be available *no acceptable alternative policies* or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact.[48]

Employers and labor organizations must, therefore, ask whether their current policies and practices produce present discriminatory effects, and seek to ascertain whether their legitimate business concerns may be accomplished equally well with a lesser differential impact. They must make a good-faith search for alternate ways to accomplish their business purpose when an existing employment policy establishes a built-in headwind for a minority. Thus, to withstand a Title VII challenge, an employer maintaining a system adversely affecting Sabbath-keepers must establish that an alternate practice is not available to accommodate the class.

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45 *Id.* at 431.

46 *Id.* at 432.

47 444 F.2d 791 (4th Cir. 1971), *cert. denied*, 404 U.S. 1006 (1971).

48 444 F.2d at 798 (emphasis added).

To establish a *prima facie* case of religious discrimination under Title VII the plaintiff must show (1) the existence of a bona fide religious belief impacted by the employment-related action complained of, (2) that he or she gave notice of the religious belief and conflict to the defendant, and (3) the discharge or other adverse action complained of.[49]

The burden of persuasion thereupon shifts to the defendant company or labor organization to demonstrate that it made a good-faith effort to accommodate the plaintiff's religious beliefs and that its efforts were unsuccessful. The employer or labor organization must demonstrate that it was unable to reasonably accommodate the plaintiff's beliefs without undue hardship.[50] Proof of the defendant's effort to accommodate the employee's religious practices is required before the defendant may raise the further defense of undue hardship.[51]

C. *The Defense of Undue Hardship*

Since what constitutes "undue hardship" is not set forth with clearly defined parameters, the resolution of this issue turns on the particular facts of each case.[52] The Sixth Circuit, in *Draper v. United States Pipe & Foundry Co.*,[53] explained that:

> '[U]ndue hardship is something greater than hardship,' and an employer does not sustain his burden of proof merely by showing that an accommodation would be bothersome to administer or disruptive of the operating routine. In addition, we are somewhat skeptical of hypothetical hardships that an employer thinks might be caused by an accommodation that never has been put into practice.[54]

The Supreme Court in *Trans World Airlines v. Hardison*[55] addressed the scope of Title VII's reasonable accommodation/undue hardship standard. In *Hardison*, a Sabbatarian alleged religious discrimination after his employer failed to accommodate his religious

49 Yott v. North Am. Rockwell Corp., 602 F.2d 904, 907 (9th Cir. 1979), *cert. denied*, 445 U.S. 928 (1980).

50 Burns v. Southern Pacific Transp. Co., 589 F.2d 403, 405 (9th Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979); McDaniel v. Essex Int'l, Inc., 571 F.2d 338, 343 (6th Cir. 1978).

51 McDaniel v. Essex Int'l, Inc., 509 F. Supp. 1055, 1058 (W.D. Mich. 1981); Claybaugh v. Pacific Northwest Bell Tel. Co., 355 F. Supp. 1, 6 (D. Ore. 1973).

52 Redmond v. GAF Corp., 574 F.2d 897, 903 (7th Cir. 1978); Draper v. United States Pipe & Foundry Co., 527 F.2d 515, 520 (6th Cir. 1975).

53 527 F.2d 515 (6th Cir. 1975).

54 *Id.* at 520.

55 432 U.S. 63 (1977).

beliefs to allow him Saturdays off. TWA had attempted to accommodate the employee by searching for someone who would voluntarily trade shifts, but because of the seniority system could not force another employee to switch shifts with Hardison. The Court of Appeals suggested that TWA could have replaced Hardison with supervisory personnel or personnel from other departments, or could alternatively have paid other employees premium wages to take the Saturday shift.

The Supreme Court stated that both alternatives "would involve costs to TWA, either in the form of lost efficiency in other jobs or higher wages.[56] It ruled that to require an employer to bear more than *de minimis* cost would constitute undue hardship[57] and that absent clear congressional intent, seniority provisions of a collective bargaining agreement need not yield to an accommodation.[58]

D. *Guidelines on Discrimination Because of Religion*

After the Court's *Hardison* decision in 1977, the Equal Employment Opportunity Commission became concerned about apparent confusion over what kinds of religious accommodation were required from employers and labor organizations.[59] After hearings in New York City, Milwaukee, and Los Angeles, the Commission found that various kinds of religious practices were not being accommodated and issued new Guidelines on Discrimination Because of Religion, which became effective on November 1, 1980.[60]

The new guidelines broadly define religious beliefs and practices.[61] They set out the statutory duty to make reasonable accommodations and outline two factors the EEOC will consider in determining whether an offered accommodation was reasonable: (1) examination of the alternatives offered the employee and (2) whether

56 *Id.* at 84.

57 *Id.*

58 *Id.* at 79-80.

59 Hearings before the United States Equal Employment Opportunity Commission on Religious Accommodation, at 2 (1978).

60 29 C.F.R. § 1605 (1977), *as amended by* 45 Fed. Reg. 72,610 (1980) (effective Nov. 1, 1980).

61 29 C.F.R. § 1605.1 (1981). The Commission defines religious practices to include:

> moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views . . . . The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices. . . .

the employer and/or labor organization offered the alternative that least disadvantaged the employee.[62] The new guidelines suggest use of voluntary substitutes and shift swaps, flexible scheduling, holiday and work breaks, and lateral transfers and changes of job assignments as possible measures of accommodation. The guidelines specifically urge labor organizations and employers to accommodate employees who for religious reasons cannot financially support labor organizations to pay an amount equivalent to dues to a charity.[63]

As for the *de minimis* cost factor enunciated in *Hardison*, the guidelines state that the Commission will consider the cost involved in relation to the size and operating cost of the employer and the number of employees needing accommodation. The guidelines provide that an employer can be required to pay, on an infrequent basis, premium wages for a substitute worker while a permanent accommodation is being sought. Administrative costs in seeking an accommodation do not constitute more than a *de minimis* cost.[64]

Recognizing conflicts with seniority rights, the guidelines encourage employers and labor organizations to include arrangements for voluntary substitutes and swaps in collective bargaining agreements.[65] The guidelines also suggest that employment tests and selection procedures given at times that exclude participation by religious minorities, and preselection inquiries about an applicant's availability have an exclusionary effect on employment opportunities for certain religious groups.[66]

E. *Special Problems Presented by Collective Bargaining*

As the facts of *Hardison* and the EEOC Guidelines suggest, many of the problems faced today by religious minorities arise from the National Labor Relations Act of 1935, which permits a labor organization to represent all employees within a bargaining unit as to the terms and conditions of employment.[67] A company and union by agreement may cast conditions of employment which make accommodation for Sabbatarians, for instance, difficult, if not impossible. Union security provisions in labor agreements usually demand financial support of the labor organization regardless of an employee's religious beliefs.

62 § 1605.2 (1981).
63 § 1605.2(d).
64 § 1605.2(e)(1).
65 § 1605.2(e)(2).
66 § 1605.3.
67 29 U.S.C. § 159(a) (1976).

These collective bargaining agreements generally provide for such items as mandatory union membership or agency fees, a prescribed grievance procedure handled by the union, seniority rights, work schedule and shift preference, promotions, wages and hours, and other items and conditions. Typical of the collective bargaining agreement is a provision that senior employees be given shift preference over employees with less seniority. Seniority also generally controls layoffs and recalls. When layoffs occur, employees having the highest seniority are to be given the available work. Such provisions often provide that in the event of a layoff, if the employee having seniority refuses to change his shift to another shift, he shall be laid off.

The theory of the inviolability of the seniority clause contained in a collective bargaining agreement grows out of the principle of majority rule. One may well question, however, whether the doctrine of majority rule should be permitted to extinguish individual interests based upon religious convictions, when the Congress has required equal employment opportunity to be of high priority in the national labor policy.

It is right and proper for Congress to have given particular attention to the religious needs of employees when Congress itself granted unions the power to be the exclusive representative of all employees within a specified employment unit. When Congress, by such legislation, made it more difficult for the individual to arrange with his employer for his particular religious needs, it effectively inhibited the accommodation of an individual's religious practices. It is therefore proper for the Congress, by remedial legislation, to require the union, as well as the employer, to accommodate the individual employee's religious needs.

Given the unequal bargaining power of the parties and the economic dependence of the employee, the employer's inflexibility in its employment policies can have a chilling effect on the employee's freedom to complain and negotiate. When there is not only inflexibility on the part of the employer but also an inflexible collective bargaining agreement that precludes any reasonable accommodation, the employee faces almost insurmountable difficulties.

Considering the labor organization's duty of fair representation in the context of Title VII, the labor organization has the legal duty to bargain in good faith concerning the elimination of actual or suspected discrimination. The labor organization has the legal duty to bargain in good faith to include provisions in labor contracts that

will permit the employer to accommodate the religious needs of its employees.

Employers and labor organizations should be put on notice that a collective bargaining agreement that is so inflexible as to prevent any accommodation for the religious needs of Sabbatarians is per se illegal. The employer and the union should at least have the burden of establishing why a collective bargaining agreement, in order to satisfy the overriding legitimate business purposes of the employer and the union, had to be drafted so as to eliminate any acceptable alternative for the religious needs of employees.

IV. Conclusion

Courts and legislatures, along with employers and labor organizations, must recognize the special needs and circumstances arising from an individual's religious beliefs. Religious accommodation, as circumscribed by constitutional standards and statutory provisions, is vital to protect the interests of those who, as Thoreau put it, march to the beat of a different drummer.[68] However delicate the task, it is to the benefit of this great nation that we provide a home and haven for religious thought and practice.

68 Thoreau, *Walden* 222 (Riverside ed. 1960).